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OLC: 78-5246/1
12 December 1978

MEMORANDUM FOR:

[Redacted]
Assistant General Counsel

FROM:

[Redacted]
Assistant Legislative Counsel

SUBJECT:

Proposed New Secrecy Agreement

1. As noted at our last meeting on 7 December, my Office wishes to have the following reflected in the package which you are preparing to go forward to the General Counsel:

--Assignment Clause: "OLC believes that the argument against inclusion of a clause assigning to the United States all financial gain resulting from a violation of the agreement is weak and that such a clause should be included. The fact that such clauses have been included in secrecy agreements between Congressional committees and their staff personnel at the Agency's urging is a matter of some significance. To refrain from including a similar provision in our own secrecy agreement merely because we now have some doubt about its judicial enforceability could have an adverse impact on our relations with key committees and would unnecessarily deprive the Agency of what may be the only effective sanction for violation of the agreement. The severability provision is specifically designed to preserve the remainder of the agreement if any of its provisions are declared void by the courts; OLC believes we would be wrong to decide the issue against ourselves beforehand."

--"Whistle-Blower" Clause: "OLC believes that the argument against inclusion of the 'whistle-blower' clause is weak. The secrecy agreement should make clear that there are channels for employee reporting of allegations of unlawful or improper activities other than unauthorized public disclosure. OLC also believes that the benefit to be gained from explicit reference to such avenues clearly outweighs any 'appearance of preconceived guilt.' The absence of a 'whistle-blower' provision would almost certainly cause problems with our Congressional oversight committees."

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